IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 490 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT THROUGH SECRETARY & ORS- Appellant(s)
Versus
B.M.JADAV NAYAK, - Respondent(s)

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Appearance :
MR SP HASURKAR, A.G.P. for Appellant(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 14/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. Being aggrieved by the judgement delivered in Special Civil Application No. 869/1982, the appellants, original respondents have approached this Court by way of this Letters Patent Appeal.

2. The facts giving rise to the petition were as under;

2.1. For the sake of convenience, the parties have been described as appearing in the petition.

2.2. The petitioner was working as a peon. Though he was not qualified to be appointed as a Ferro Machine Operator, he had been operating Ferro Machine in the office of respondent no. 2. As no other qualified person was available, in pursuance of no objection certificate issued by the employment exchange, the petitioner was promoted to the post of Ferro Machine Operator by an order dated 29th November, 1978.

2.3. The educational qualification required for being appointed to the post of Ferro Machine Operator, as per the Recruitment Rules, was passing of standard 10th but the petitioner had studied only up to standard 7. In spite of the said fact, as no other qualified person was available, the petitioner was promoted and it appears that the petitioner was performing his duties diligently.

2.4. In spite of the fact that the petitioner was promoted by an order dated 29th November, 1978, without using any words of limitation, an order dated 3rd March, 1981 was passed by respondent no. 2 whereby his appointment was made limited to the effect that

he was to work only for a period of three months on purely temporary basis. It is not in dispute that before the aforestated order was passed, the petitioner was not heard by any authority though he was given full-fledged promotion by the order dated 29th November, 1978.

2.5. The petitioner was then reverted to the post of peon by an order dated 10th June, 1981. It is also not in dispute that before the order of reversion was passed, the petitioner was not heard by any authority.

2.6. Being aggrieved by the impugned order of reversion, the petitioner filed Appeal No. 236/1981 before the Gujarat Civil Services Tribunal at Gandhinagar. The Tribunal was pleased to uphold the said order by its order dated 17th August, 1981. Being aggrieved by the said order passed by the Tribunal, the petitioner filed Special Civil Application No. 869/1982, which was allowed by the impugned judgement dated 19th August, 1993 and being aggrieved by the said judgement, the state authorities have preferred this appeal.

3. Though served, nobody has appeared for the petitioner whereas learned AGP Shri Hasurkar has appeared for the respondents-appellants.

4. Learned AGP Shri Hasurkar has forcefully submitted that the impugned judgement delivered by the learned Single Judge is absolutely unjust and improper for the reason that the petitioner was not duly qualified to be appointed as Ferro Machine Operator. According to him, when the appointment was

in violation of the provisions of the relevant Recruitment Rules, the learned Single Judge ought not to have protected the petitioner and the order of reversion ought to have been upheld.

5. We have heard the learned advocate and have gone through the relevant record.

6. Upon hearing the learned advocate and looking to the facts of the case, we have found that it is not in dispute that principles of natural justice were violated by the respondents while reverting the petitioner and that was one of the main factors, which rightly appealed to the learned Single Judge.

7. As stated hereinabove, the petitioner was never called upon to show cause as to why his regular promotion was converted into temporary or adhoc promotion and he was also never asked to show cause as to why he should not be reverted from the post of Ferro Machine Operator to the post of peon. In our opinion, by not giving any opportunity to the petitioner, before passing the impugned order, which had civil consequences, the respondent authorities had violated the principles of natural justice.

8. It would be important to note that even the learned AGP could not show any document calling upon the petitioner to show cause as to why his regular promotion was converted into temporary or ad hoc promotion. This fact clearly reveals that the impugned order was passed in violation of the principles of natural justice.

9. In view of the above fact, in our opinion, the learned Single Judge cannot be said to have committed

any error while setting aside the impugned order of reversion.

10. In the circumstances, the appeal is dismissed with no order as to costs.

(ANIL R. DAVE, J.)

(HARSHA DEVANI, J.)

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